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IN THE

Supreme Court of the United States.

C. L. ASHTON et al.,
Petitioners,
vs.
CAMERON COUNTY WATER IMPROVEMENT DISTRICT NUMBER ONE,
Respondent.

No. 859.

MOTIONS FOR PERMISSION TO FILE BRIEFS AND AMICUS CURIAE BRIEF.

R. L. WARD,
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St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

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MOTION OF R. L. WARD TO FILE AMICUS CURIAE BRIEF.

Comes now R. L. Ward, of the firm of Ward & Reeves, of Caruthersville, Pemiscot County, Missouri, and represents and shows to the Court that he and his firm are the attorneys for the following municipal corporations, to wit:

(a) St. Francis Levee District of Missouri, a municipal corporation, whose territory embraces all of Pemiscot County, Missouri, and a large acreage in New Madrid County and in Dunklin County, Missouri.

(b) Drainage District No. 8 of Pemiscot County, Missouri, a drainage district whose territory embraces 67,000 acres of land in said county.

(c) Drainage District No. 6 of Pemiscot County, Missouri, a drainage district whose territory embraces 82,000 acres of land in said county.

That each of the above enumerated districts are municipal corporations and are insolvent;

That the St. Francis Levee District has more than one million dollars ($1,000,000.00) outstanding bonded indebtedness and of said amount approximately 50 per cent have signed up agreeing to a proposition with the Levee District to accept a refunding settlement wherein the funds are to be furnished by the R. F. C.;

That Drainage District No. 8 aforesaid is insolvent and has a bonded indebtedness of four hundred forty-six thousand dollars ($446,000.00) outstanding, a large portion of which is in default; that it has been granted a loan by the R. F. C. with which to refinance upon a basis of two hundred thousand dollars ($200,000.00), and that 66⅔ per cent of the outstanding bondholders have signed up an agreement to accept said amount, and the district has filed a petition in bankruptcy and the cause is now pending in the federal court of this state;

That Drainage District No. 6 aforesaid has an outstanding indebtedness or five hundred eight thousand dollars ($508,000.00) unpaid outstanding bonds; that more than 66⅔ per cent have signed up an agreement to accept settlement with the district and that in said settlement the R. F. C. has agreed to loan for that purpose the sum of three hundred fifty thousand dollars ($350,000.00), and the bankruptcy action in that district is now pending in said federal court of Missouri;

That it is for the best interest of the bondholders and for each of said districts aforesaid that these settlements

be made, and by making said settlements said districts will be rendered solvent and the bonds will be worth a hundred cents on the dollar;

And that by reason of said above detailed facts each of said municipal districts are vitally interested in the above-entitled case and in the law being declared constitutional; and to that end ask to have permission of this Court to file an amicus curiae brief.

Wherefore, premises considered, the undersigned prays the Court to be permitted to file an amicus curiae brief on behalf of said above designated levee and drainage districts.

R. L. WARD,
Attorney for St. Francis Levee District, Drainage District No. 8 and Drainage District No. 6.

MOTION OF CHAS. CLAFLIN ALLEN, JR., TO FILE AMICUS CURIAE BRIEF.

Now on this day comes Chas. Claflin Allen, Jr., an attorney of St. Louis, Missouri, and represents and shows to the Court as follows:

(1) That he is an attorney at law, duly licensed to practice law in the Supreme Court of Missouri and before this Honorable Court, and that as such an attorney at law he represents owners and holders of more than two million dollars ($2,000,000.00) of the bonds of Drainage Districts Nos. 1, 2, 3, 6, 8 and 9 in Pemiscot County, Missouri, as well as bondholders in other drainage and municipal districts.

(2) That said drainage districts in Pemiscot County, Missouri, have made application to and received resolutions of agreement from the R. F. C. to refinance their outstanding bonded indebtedness; that he represents more than 66⅔ per cent of the outstanding bonded indebtedness of said districts and that his clients have agreed to the compromise adjustment and settlement in said districts; that he and his clients are vitally interested in Section 80 of the Bankrupt Act, particularly in reference to the right and authority of said Drainage Districts and municipal corporations to take advantage of the Bankrupt Act and that he believes said act is constitutional.

Wherefore, as representative of his clients as aforesaid, he moves the Court that he be permitted to file in the cause herein an amicus curiae brief in support of the constitutionality of the Bankrupt Act in controversy.

CHAS. CLAFLIN ALLEN, JR.,
Attorney for Bondholders of Drainage Districts Nos. 1, 2, 3, 6, 8 and 9 of Pemiscot County, Missouri.

BRIEF.

I.

STATEMENT.

Because of the interest of our clients as set out in motions herein to be permitted to file this brief, we are vitally interested in Section 80, Bankrupt Act, in particular Section 303, U. S. C., as added to Section 80 of the Act of May 24, 1934, and after investigation of the law in regard to former holdings of this Court under various matters arising under said section 80, we are convinced that this law is constitutional and herein express to your Honors our views in support of the constitutionality of said act.

II.

THIS ACT DOES NOT VIOLATE THE TENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

(A) The Tenth Amendment provides "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." But the Constitution of the United States itself directly provides "Congress shall have power to establish uniform laws on the subject of bankruptcy throughout the United States."

Sec. 8, Art. I, Constitution of United States.

(B) This constitutes the power of Congress to establish uniform bankruptcy law which is paramount to the powers of the state; is not limited to English or Colonial laws in force when the Constitution was adopted, but must be

interpreted in the light of what is required under modern conditions to deal adequately with relationship existing between embarrassed debtors and their creditors, and is not necessarily limited to that scope which has been heretofore exercised.

Continental Ill. National Bank & Trust Co. v. Chicago, R. I. & P. Ry. Co., 294 U. S. 648 (79 L. Ed. 1110);
U. S. National Bank of Omaha v. Pamp, 77 Fed. (2d) 9;
Campbell v. Allegheny Corp., 75 Fed. (2d) 947 (Cert. denied, 56 S. Ct. 92).

(C) While Congress under pretext of executing such power cannot pass laws dealing with matters not entrusted to national government, yet so long as legislation is fairly within constitutional grant, public policy exemplified therein is exclusively within congressional discretion.

In re Radford, 8 Fed. Supp. 489;
Louisville Joint Stock Land Bank v. Radford, 74 Fed. (2d) 576.

(D) In the exercise of power to pass bankruptcy law and grant exemption pursuant thereto Congress acts free of state laws, and this power of Congress is not diminished by any other provision of the Constitution.

In re Cope, 8 Fed. Supp. 778 (Aff. 8 Fed. Supp. 961).

(E) All bankrupt laws when applied abrogate private contracts; and perforce of the Bankrupt Act legally forces the creditors by bankruptcy or composition and settlement through bankruptcy to accept a less amount from the debtor as a settlement in full than he contracted to

accept. State legislatures cannot force this to be done by law, because their acts would violate the Constitution of the United States, whereby "no state shall pass any law impairing the obligation of contracts"; but Congress may do this.

Sec. 10, Art. I, Constitution of United States;
In re East Contra Costa Irrigation District, 10 Fed. Supp. 175.

The above clause is the limitation on the legislative powers of the state in whatever form it may assume, and the purpose is to preserve sacred the principle of inviolability of contracts against legislative interference, and operates directly upon the states in reference to their legislative functions.

Murray v. Charleston, 96 U. S. 444;
U. S. v. United Shoe Manufacturing Co., 234 Fed. 137.

The United States are not included within the Constitution prohibition, which prevents states from passing laws impairing the obligation of contracts and does not apply to acts of Congress.

Sinking Fund Cases, 99 U. S. 718;
Carter Planing Mill Co. v. New Orleans etc. Ry. Co., 112 Miss. 148 (72 So. 884).

III.

THE BANKRUPT ACT MAY APPLY TO ARMS OF THE STATE SUCH AS MUNICIPAL CORPORATIONS, AS WELL AS INDIVIDUALS.

(A) A county may invoke this act in question.

Carteret Co. v. Sovereign Camp W. O. W., 78 Fed. (2d) 337.

Statute providing for emergency temporary aid of **public debtors** under Bankruptcy Act held not unconstitutional as not within bankruptcy principles.

In re East Contra Costa Irrigation District, 10 Fed. Supp. 175.

(B) This act will be sustained under Article I of Section 8, Constitution of United States, which act authorizes Congress to make all laws necessary and proper; and may place new persons under the law; a law will be passed to meet new condition; and as to drainage and irrigation districts, this law is no usurpation of the state sovereignty because the local government authority is preserved and the private element of the district is sufficiently distinct to bring it in the bankruptcy power.

In re Imperial Irrigation District, 10 Fed. Supp. 832.

(C) The nature and extent of the power of Congress to legislate in regard to bankruptcy is best fixed by a gradual process of historical and judicial inclusion and exclusion, and the judicial interpretation has been uni-

formly in the direction of progressive liberalization in respect to the operation of the bankruptcy power.

Continental Ill. etc. Co. v. C. R. I. & P. R. Co., 294 U. S. 648, l. c. 670-675.

(D) Statutes authorizing political subdivisions of the state to take advantage of the National Bankruptcy Act held not invalid.

In re Imperial Irrigation District, 10 Fed. Supp. 832.

(E) Drainage, levee and irrigation districts are empowered by law to borrow money, issue bonds and to create debts, and thereby become debtors, and the persons or corporations to whom they sell the bonds or from whom they borrow money become their creditors; so that there exists the relation of debtor and creditor as between private corporations, and by such acts they are not performing governmental or "arm of the state" functions, and consequently the Bankrupt Act may be applied to them to permit settlement and composition of their indebtedness without in any way interfering with their governmental powers and duties. And this statute is but a step in the universal growth and application of the Bankrupt Act from its first application, which was confined to traders, to including bankers, brokers and underwriters by the Act of 1880, and to the Act of 1841, which added merchants and other additions until now practically all classes of persons and corporations are included, and all of which "have not gone beyond the limit of congressional power, but, rather, have constituted extensions into a field whose boundaries may not yet be fully revealed."

Continental Ill. etc. Co. v. C. R. I. & P. R. Co., 294 U. S., l. c. 671-675.

ARGUMENT.

I.

The Act in Question Does Not Violate the Tenth Amendment to the Constitution of the United States.

The question here is whether or not the right of a municipal corporation to go into bankruptcy or make settlement with its creditors must be left to the states, or is it a question for Congress? In other words, has Congress violated state rights by incorporating in the Bankrupt Act the addition to Section 80 of the Bankrupt Law, which is known and designated as Section 303, Title 11, U. S. C. A., as passed May 24, 1934.

It appears to us that there are two very convincing reasons why this statute does not violate said Tenth Amendment to the Constitution of the United States, which provides "the power not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people." These two reasons are:

(A) The Constitution, in section 8, article I, does specifically delegate to the Congress of the United States the "power to establish uniform laws on the subject of bankruptcy throughout the United States."

This power so granted to the Congress has been before this Court since the first Bankrupt Act in 1800, and has been given a very liberal construction by the courts. In the case of Continental Illinois National Bank & Trust Company v. C. R. I. & P. Ry. Company, 294 U. S. 648, with five other cases combined in the opinion, this Court, in a very able and exhaustive opinion by Judge Sutherland,

reviews the Bankrupt Law, wherein Section 77 of the Bankrupt Law was declared constitutional, and at page 667 quoted Section 8, Article I of the Constitution, and held that it was not limited to the English Bankrupt Law existing at the time of the adoption of the Constitution. At that time the persons who were permitted to fall within the term of bankruptcy was limited to traders, but this Court, in Waring v. Clark, 5 How. 441, held that the grant extending the "judicial power to all cases of admiralty and maritime jurisdiction" was not limited to, and was not to be interpreted by, what were cases of admiralty jurisdiction in England when the Constitution was adopted." And you then laid down the rule in said case (l. c. 670): "For, like many other provisions of the Constitution, the nature of this power and the extent of it can best be fixed by the gradual process of historical and judicial 'inclusion and exclusion.'"

The first act, that of 1800, ignored the English law so as to include bankers, brokers and underwriters, as well as traders, and the Act of 1841 added merchants and other additions that have been made until now, so you say, "practically all classes of persons and corporations are included." The Bankrupt Act of 1841 took what was then known "as a radical step forward by conferring upon the debtor the right by voluntary petition to surrender his property, with some exceptions, and relieve himself of all future liability in respect to past debts."

As to the Act of 1867, as amended, you say (l. c. 671):

> "The debtor for the first time was permitted, either before or after an adjudication in bankruptcy, to propose terms of composition to his creditors to become binding upon their acceptance by a designated majority and confirmation by the Judge. The fundamental and radically progressive nature of these ex-

tensions becomes apparent upon their mere statement, but all have been judicially approved or accepted as falling within the power conferred by the bankruptcy clause of the Constitution. Taken altogether, they demonstrate in a very striking way the capacity of the bankruptcy clause to meet new conditions as they have been disclosed as a result of the tremendous growth of business and development of human activities from 1800 to the present day. And these acts, far-reaching though they may be, have not gone beyond the limit of congressional power, but rather have constituted extensions into a field whose boundaries may not yet be fully revealed."

And so you held that Section 77 of the Bankrupt Act advances another step in the direction of liberalizing the law on the subject of bankruptcies, and made it apply to reorganization of railroads, saying: "The constitutionality of the old provision for a composition is not open to doubt; that provision was there sustained upon the broad ground that the 'subject of bankruptcies' was nothing less than 'the subject of the relations between an insolvent or nonpaying debtor and his creditors, extending to his and their relief.'"

Therefore, based upon the above eminent authority and other cases upon which it is based, it is clear that the right of any creditor, individual, corporation or municipality, as a debtor to make composition with its creditors is within the right of Congress under Section 8 of Article I of the Constitution of the United States. All over this country are drainage districts, irrigation districts and levee districts. Land values sunk, farming products dwindled, and the lands from which the assessed benefits had to come could not produce enough to meet the obligations. The districts, though being in one sense an arm of the state, yet in the relationship of borrowing money

were merely debtors, and the bondholders or persons who loaned the money were creditors. The debtors couldn't pay; they were insolvent or bankrupt. Bonds were selling at ten or fifteen cents on the dollar in some of these districts. Bondholders wanted to make a composition; the districts wanted to make a settlement and get relief down to such an amount that the new bonds would be worth 100 cents on the dollar and they would be paid as they became due. The bondholders were scattered all over the United States. It was an impossibility to get 100 per cent of them in to a settlement. Some of the bonds are lost, perhaps some destroyed, but they were still outstanding, so that a necessity arose for an extension of the Bankrupt Act so as to get the debtor and the creditors together to make a just and amicable settlement by which all creditors would be treated exactly alike and would be forced to abide. Therefore the law was passed and it is within the terms of the Constitution. It makes a "uniform law on the subect of bankruptcy throughout the United States."

(B) The Tenth Amendment to the Constitution of the United States provides "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." We contend that this power of bankruptcy was directly and specifically delegated to the United States by the Constitution, but we also contend that the states could not pass a constitutional act on the question of bankruptcy to meet the condition in these districts. Section 10 of Article I of the Constitution of the United States provides "no state shall pass any law impairing the obligation of contracts." The contract of these drainage districts, evidenced by the bonds, provided for payment of

100 cents on the dollar with 6 per cent interest (in most cases). The districts couldn't pay that; a large majority of the bondholders wanted to settle; and the districts wanted a composition. If the State Legislature passed an act permitting the payment of less than 100 cents on the dollar with interest, then it would be an impairment of an obligation and therefore would be unconstitutional. That left no legislative body that could give this relief except Congress. State legislation couldn't force bondholders to a composition or settlement of less than face value, but that does not prohibit Congress from passing a law that impairs the obligation of a contract. In the sinking funds cases, decided in 1878 by this Court, you said, in 99 U. S., l. c. 718, in regard to power of the United States: "They (U. S.) are not included within the constitutional prohibition which prevents states from passing laws impairing the obligation of contract." Of course, the United States Congress cannot pass an act depriving one of property without due process of law, but it's always been held that under the Bankrupt Act, where all the creditors are treated alike and all of them given equal participation in the funds of the debtor, that it does not violate the due-process act.

Therefore, the states could not pass this law impairing the obligation of contract and the United States Congress can pass it. It is a reasonable deduction that for Congress to do an act which it had authority to do and which the state had no authority to do, could not be in violation of state rights.

II.

The Bankrupt Act Applies to Municipal Corporations, as Well as to Individuals.

The sole purpose of the Bankrupt Act was to give to the creditors, equally, all that they could get out of the debtor by legal process, or more than they could get out of the debtor by such process, and at the same time to leave the debtor free to make a new start. The fact that an irrigation district, a drainage district or levee district is for some purposes an arm of the state is beside the question here. Its governmental functions or its public functions, its method of operation, etc., has nothing to do with its relation as creditor or debtor. The district borrows money by a sale of its bonds and a lien is placed upon all property within the district to guarantee the payment of the bonds. The property becomes insufficient to do this. The district becomes insolvent; it can't meet its obligations; as a debtor it is bankrupt. There are two parties involved, the debtor, or the district, and the creditor, or bondholders. Railroads can go into bankruptcy, banks placed in the hands of receivers, public utilities of all kinds, not because they are private enterprises or quasi-public enterprises, but because the relation of debtor and creditors obtains, and because it is for the best interest of both the debtor and the creditors that a composition or settlement be made. Yet there is always the existing fact that it will be impossible to get unanimous consent of all creditors for a settlement. And, again, the debtor runs up against the proposition that if he owes $100.00, it is not paid by paying the creditor $50.00. Therefore, there is a great demand for a law that permits a large majority of creditors to settle with the debtor, so that the debtor may carry on and the bonds of the creditors to

the amount of the composition or settlement be made good, and bankruptcy is as necessary and will be on these municipal corporations as upon quasi-public corporations and private corporations.

In Carteret Company v. Sovereign Camp, W. O. W., reported in 78 Fed. (2d) 337, the Circuit Court of Appeals of the Fourth Circuit says:

> "If the county is hopelessly involved in debt it may, with the co-operation of majority in amount of its creditors, invoke provisions of Bankruptcy Act for emergency temporary aid of public debtors, and if unable to secure co-operation of creditors or collect sufficient taxes after proper effort to meet claims of creditors of equal standing with creditor who is suing county, county may obtain relief for itself and its other creditors by supplemental petition, invoking the principles followed in Groner et al. v. U. S., 73 Fed. (2d) 196."

This may have been obiter dictum in that opinion, but it shows the spirit, trend and opinion of the courts to the effect that this law is applicable to public municipal corporations; and in the case of Imperial Irrigation District, 10 Fed. Supp. 832, the Court there held that the law was not invalid because applying to an arm of the state.

In Canada Southern R. Co. v. Gebhard, 109 U. S. 527, we find a case where the mortgage bonds refunded dollar for dollar the principal, but eliminated the interest, and new bonds bore reduced rates, and the time of maturity was extended. Also, the second mortgage bonds admitted by exchange of same mortgage bonds. There was a consent of a large majority of the first mortgage bondholders. The Canadian Act provided for a plan filed in Chancery, and consent of three-fourths was required. This

was passed upon by the Chancery Court in Canada, and one branch of the case came from New York to the Supreme Court, which said (l. c. 536):

> "The confirmation and legalization of 'a scheme of arrangement' under such circumstances is no more than is done in bankruptcy when a 'composition' agreement with the bankrupt debtor, if assented to by the required majority of creditors, is made binding on the nonassenting minority. In no just sense do such governmental regulations deprive a person of his property without due process of law. They simply require each individual to conduct himself for the general good as not unnecessarily to injure another. Bankrupt laws have been in force in England for more than three centuries, and they had their origin in the Roman law. The Constitution expressly empowers the Congress of the United States to establish such laws. Every member of a political community must necessarily part with some of the rights which, as an individual, not affected by his relation to others, he might have retained. Such concessions make up the consideration he gives for the obligation of the body politic to protect him in life, liberty and property. Bankrupt laws, whatever may be the form they assume, are of that character. * * * It (plan for confirmation) is in entire harmony with the Constitution of the United States, which, although prohibiting states from passing laws impairing obligation of contracts, allows Congress 'to establish uniform laws on the subject of bankruptcy through the United States.' Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized the scheme may fail. All home creditors can be bound. What is needed is to bind those who are abroad. Under these circumstances the true spirit of international comity requires that schemes of this character, legalized at home, should be recognized in other countries."

We find in Continental Ill. etc. Co. v. C. R. I. & P. Ry. Co., 294 U. S., l. c. 675, this Court saying in regard to the above opinion, it is unnecessary to consider the criticism sometimes made that these excerpts are dicta merely, since we are of opinion that they are sound in principle.

Therefore, we submit that there is no rule of the appellate courts and no reason for a ruling that the drainage districts, irrigation districts or levee districts should not have the right and cannot have the constitutional right of the benefit of the Bankrupt Act, and we submit that this act should be declared constitutional.

Respectfully submitted,

R. L. WARD,
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Counselor for Drainage Districts Nos. Six and Eight in Pemiscot County, Missouri, and St. Francis Levee District of Missouri.

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